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UNITED STATES DISTRICT COURT  
 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil Action No. 3:CV-08-47

METSO PAPER USA, INC., )  
 Plaintiff )

vs. )

GENERAL ELECTRIC COMPANY, )  
 Defendant. )

\*\*\*\*\*

DEPOSITION OF HARRI K. KYTOMAA, Ph.D.,  
 P.E., CFEI, CFI, taken on behalf of the  
 Plaintiff, pursuant to the applicable  
 provisions of the Federal Rules of Civil  
 Procedure, before Denise M. Rae, a  
 Professional Shorthand Reporter and Notary  
 Public within and for the Commonwealth of  
 Massachusetts, at the Law Offices of  
 Campbell, Campbell, Edwards & Conroy, P.C.,  
 One Constitution Plaza, 3rd floor, Boston,  
 Massachusetts, on Tuesday, January 25, 2011,  
 commencing at 10:19 a.m.

Job No. CS309801



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REPORTER'S NOTE: Original exhibits attached to original deposition transcript.

1 At the Law Offices of Campbell,  
2 Campbell, Edwards & Conroy, P.C., Boston,  
3 Massachusetts:

4 (Notice of Deposition, Schedule A  
5 and Certificate of Service marked  
6 exhibit number 1 for  
7 identification.)

8 (One-page document entitled  
9 "Depositions and Discovery,  
10 Rule 26" marked exhibit number 2  
11 for identification.)

12 (Two-page Professional Profile of  
13 Harri K. Kytomaa, Ph.D., P.E.,  
14 CFEI, CFI, marked exhibit number 3  
15 for identification.)

16 (Report of H.K. Kytomaa dated  
17 August 31, 2010 marked exhibit  
18 number 4 for identification.)

19 (Plaintiff's Supplemental Answer to  
20 Defendant's Interrogatories marked  
21 exhibit number 5 for  
22 identification.)

23 (Curriculum Vitae of Harri Kytomaa  
24 marked exhibit number 6 for  
25 identification.)

1 IT IS HEREBY STIPULATED AND AGREED  
2 by and between counsel for the respective  
3 parties that the Witness will read and sign  
4 the deposition transcript under the pains  
5 and penalties of perjury; and that the  
6 reading and signing is deemed waived if not  
7 accomplished within 30 days of transcript  
8 delivery.

9 HARRI K. KYTOMAA, a witness called  
10 for examination by counsel for the  
11 Plaintiff, having been satisfactorily  
12 identified by the production of his driver's  
13 license, being first sworn by the Notary  
14 Public, was examined and testified as  
15 follows:

16 DIRECT EXAMINATION

17 by MR. STERN:

18 Q. Good morning. I'm Robert Stern from Clausen  
19 Miller. I'm going to avoid all the intro  
20 stuff, since I know you've been through this  
21 more than enough times. Whatever applied in  
22 all those other depositions will also apply  
23 in this deposition. So I'm going to get  
24 right down to it. We've got a lot to cover  
25 today. We've got a lot to about. Tell me,

1           how did you prepare, if at all, for this  
2           deposition?

3       A. I reviewed my report and my file materials.

4       Q. And what does your file materials consist  
5           of?

6       A. A number of documents and those documents  
7           would include depositions that have been  
8           taken in the case, discovery materials that  
9           have been provided by the parties involved,  
10          certain discovery materials from Metso,  
11          discovery materials from GE, various Answers  
12          to Interrogatories, reports by a number of  
13          experts, inspection notes, inspection  
14          photographs from experts, some  
15          communications from people who were either  
16          employed by Metso or provided services to  
17          Metso, and this may be duplication, but  
18          also, materials such as technical documents  
19          provided by GE. My file also includes  
20          analyses that I have performed, and I think  
21          that summarizes what is in my file.  
22          Obviously, I haven't looked at my file in  
23          answering the question, so there may be  
24          things that I have forgotten, but I  
25          certainly intended to give you a full

1 answer.

2 Q. And did you bring all of the file materials  
3 which you reviewed here with you today?

4 A. Yes.

5 Q. Are there any file materials which you have  
6 which you did not bring with you today?

7 A. No.

8 Q. Did you discuss with anyone issues related  
9 to your file materials prior to today's  
10 deposition?

11 A. I'm not sure I understand your question.

12 Q. Sure. I'll rephrase it. Prior to today,  
13 did you discuss with any attorneys involved  
14 in this litigation any of your file  
15 materials?

16 A. Yes.

17 Q. Which attorneys did you talk to?

18 A. I met with Tom Cooper and Jim Campbell.

19 Q. Did that occur in one sitting or more than  
20 one sitting?

21 A. I certainly met with them more than once  
22 during the life of this case.

23 Q. Okay, and let's talk about just for right  
24 now just in preparation for this  
25 deposition. Did you meet with them more

1           than once or just once?

2     A.   Once.

3     Q.   And when did that take place?

4     A.   Yesterday.

5     Q.   Where did that take place?

6     A.   In this room.

7     Q.   For how long?

8     A.   Most of the morning and through the lunch  
9           hour.

10    Q.   And did you meet with just Mr. Cooper or Mr.  
11       Cooper and Mr. Campbell?

12    A.   Both.

13    Q.   Anyone else involved in that meeting?

14    A.   Yes.

15    Q.   Who else?

16    A.   Doctor Vijay Somandepalli. Somandepalli,  
17       S-o-m-a-n-d-e-p-a-l-l-i.

18    Q.   And where is he employed?

19    A.   Exponent.

20    Q.   And is he also a designated expert in the  
21       Metso fire?

22    A.   Not that I know of.

23    Q.   And what is his specialty at Exponent?

24    A.   His background is in aeronautics and  
25       astronautics and mechanical engineering.



1 Q. Is his background similar to yours or  
2 different than yours?

3 A. It's similar to mine.

4 Q. Okay. Are you aware of Clausen Miller? Are  
5 you familiar with the Law Firm of Clausen  
6 Miller?

7 A. I've heard the name.

8 Q. And are you familiar with myself?

9 A. I've seen your name in the context of this  
10 particular case.

11 Q. Have we ever worked together?

12 A. Perhaps, but I don't recall.

13 -Q. And are you presently involved in litigation  
14 or matters with Clausen Miller?

15 A. It may be the case. I haven't checked.

16 Q. And when was the last time, if ever, that  
17 you received a direct assignment where the  
18 client that was paying your bills was Zurich  
19 Insurance Company?

20 A. I don't necessarily keep track of that, but  
21 I certainly -- the ones that stick to mind  
22 are the ones that I have trouble getting  
23 paid, but -- One particular case was in the  
24 late nineties, where that occurred, and so I  
25 do remember specifically working then for

1 Zurich Insurance. The insurance companies  
2 that sometimes pay ultimately for the work  
3 that I do present themselves in ways that I  
4 don't completely either recognize or keep  
5 track of.

6 Q. How do you mean that?

7 A. What I mean by that is that the bills, for  
8 example, may be channeled through a law firm  
9 and the paying insurance company or  
10 insurance companies may not be known to me.

11 Q. Okay, and for this particular matter, who  
12 are you sending your bills to? I should  
13 start out, have you sent any bills for this  
14 matter?

15 A. I have sent bills.

16 Q. Okay, and who did you send the bills to?

17 A. Let me just check --

18 Q. Sure.

19 A. -- the address of the recipients. In this  
20 particular matter, the invoices have been  
21 sent to Mike McWeeney, M-c-W-e-e-n-e-y, at  
22 Electric Insurance Company.

23 Q. And have your bills been paid?

24 A. To my knowledge, yes.

25 Q. That would go to your accounting or billing

1 department, as opposed to directly to you?

2 Exponent has individuals that are

3 responsible for collections and billings?

4 A. I think, if you could just state that as one  
5 question.

6 Q. Oh, sure. Exponent has individuals whose  
7 job it is to be responsible for collection  
8 of invoices?

9 A. I don't believe that we have individuals  
10 that are responsible for collection of  
11 invoices.

12 Q. So how would you determine whether or not  
13 any of these invoices that were sent out  
14 were actually paid?

15 A. It can occur in a variety of ways,  
16 generally.

17 Q. Why don't you tell me specifically for  
18 these; how would you find out for these  
19 invoices if you were paid?

20 A. I'm not sure exactly what you want me to  
21 answer, so let me tell you what I will  
22 answer.

23 Q. And then I'll rephrase.

24 A. Sure. That's fine. If I wanted to find out  
25 whether the invoices have been paid, I can

1 make a call to our accounts receivable  
2 department and get an answer or I can log on  
3 to our project accounting and see what the  
4 payment status is.

5 Q. So you differentiate accounts receivable  
6 from the way that I phrased the question  
7 before as someone responsible for collection  
8 of bills; correct?

9 A. Yes. I think I correctly differentiated  
10 between those two functions, yes.

11 Q. All right. Are you presently involved in  
12 any matters where you're working for Zurich  
13 Insurance Company?

14 A. I may be. I haven't undertaken the task of  
15 making that determination.

16 Q. Are you presently involved in any matters  
17 where you're working for Chartis or one of  
18 the Chartis subsidiaries?

19 A. I would say yes.

20 Q. Are you presently involved with any matters  
21 where you're working on behalf of Star  
22 Tech?

23 A. I've heard the name. I would say that, in  
24 the past, I probably have been involved with  
25 them. I haven't attempted to determine

1       whether I'm currently involved with them.

2       Q.   And that's all I'm asking right now. I've  
3       just got a couple more carriers. Currently,  
4       are you presently working on any matters for  
5       Aegis?

6       A.   I may be, but I haven't tried to make that  
7       determination.

8       Q.   And are you presently working on a matter  
9       called Praxair or involving Praxair?

10      A.   Maybe. Perhaps. I've heard the name  
11      Praxair and I'm personally not directly  
12      involved in any case that I know of right  
13      now with that name, but colleagues of mine  
14      may be.

15      Q.   And are you involved in any way in a matter  
16      involving Praxair down in Mexico?

17      A.   No.

18      Q.   Are you familiar with a person by the name  
19      of Mark McNeely?

20      A.   I am.

21      Q.   Who is Mark McNeely?

22      A.   Mark McNeely is an engineer in our Menlo  
23      Park, California office.

24      Q.   Does Mr. McNeely have a specialty?

25      A.   Yes. He has a specialty in the area of

1 electromagnetic frequency and  
2 electromagnetic interference.

3 Q. And is that specialty different than your  
4 specialty?

5 A. Yes. I would say that I -- to the extent  
6 that an engineering project requires  
7 attention to electromagnetic interference, I  
8 would tend to pass that work on to Mark  
9 McNeely.

10 Q. And that could involve a turbine?

11 A. It can involve anything, really, you know,  
12 to the extent that that particular expertise  
13 is sort --

14 Q. Have you ever recommended to any of your  
15 clients that Mark McNeely be brought into a  
16 case? When I say "case," I don't  
17 necessarily mean a litigation. I should say  
18 a file assignment. I don't know how you  
19 categorize them.

20 A. The way we work doesn't always involve the  
21 action that you imply in your question, so I  
22 may not make a recommendation. I may simply  
23 talk to him or anybody else. So there's two  
24 parts to your question. One is whether the  
25 function of recommending someone to someone

1 outside of Exponent occurs, and the other is  
2 who is involved in the project.

3 Q. Okay. Yes. My question was specifically to  
4 how you've broken it down, just to the first  
5 part. Have you recommended to somebody that  
6 Mark McNeely be brought into a project that  
7 you were involved with?

8 A. Yes, yes.

9 Q. And did that in fact happen on the Praxair  
10 matter?

11 A. So on the Praxair matter in Mexico, which  
12 I'm aware of --

13 Q. Okay.

14 A. -- I did recommend that Mark McNeely would  
15 be appropriate for the issues at hand.

16 Q. Okay. Before you came, we marked a whole  
17 bunch of documents today to try to move us  
18 along. So we marked as the first exhibit,  
19 plaintiff's exhibit 1. If you could just  
20 take a look at this and let us know what  
21 when you're done. (Indicating.)

22 MR. COOPER: Could you describe  
23 what that is?

24 MR. STERN: It's the Notice.

25 Q. Have you seen this Notice of Deposition

1 before I just handed it to you?

2 A. I have.

3 Q. When was the first time you saw a Notice of  
4 Deposition for yourself?

5 A. My recollection is that there was an old  
6 Notice of Deposition -- I can't remember  
7 when -- and then only recently have I seen  
8 this particular one.

9 Q. Okay. How did you originally receive that  
10 old Notice of Deposition?

11 A. I don't recall.

12 Q. How did you receive this version of the  
13 Notice of Deposition?

14 A. I believe this was given to me yesterday.

15 Q. After you received the old Notice of  
16 Deposition, did you have any discussions  
17 with your attorneys before yesterday  
18 concerning the contents of that old Notice  
19 of Deposition?

20 A. I may have, but I don't recall any such  
21 discussion.

22 Q. Okay. Have you ever worked with the Law  
23 Firm of Campbell, Campbell, Edwards &  
24 Conroy, other than for this matter?

25 A. Yes.



1 Q. How many times?

2 A. I don't know. I mean, I worked against  
3 them, as well as with them, but I don't keep  
4 count of that.

5 Q. So let's just talk about with them. Is it  
6 more than five or less than five?

7 A. I'd say, over a period of a couple of  
8 decades, it's probably more than five.

9 Q. More than ten or less than ten?

10 A. I don't know.

11 Q. Somewhere around ten?

12 A. I don't know.

13 Q. More than a hundred or less than a hundred?

14 A. I'd say definitely less than a hundred.

15 Q. More than fifty or less than fifty?

16 A. I don't know.

17 Q. Then against, how many times have you been  
18 involved in matters against Campbell,  
19 Campbell, Edwards & Conroy?

20 A. Same thing. I haven't kept a count of it.

21 Q. Do you have a feeling of whether it was more  
22 than fifty or less than fifty?

23 A. I'd say less than fifty.

24 Q. And for the matters that you've worked with  
25 Campbell, Campbell, Edwards & Conroy, were

1       you on the plaintiffs' side or the  
2       defendants' side of a litigation or both?

3       A. I don't keep track of that, but probably  
4       both.

5       Q. Are you presently working with Campbell,  
6       Campbell, Edwards & Conroy in any other  
7       matter?

8       A. I'm currently working with -- yeah. The  
9       answer is yes.

10      Q. Okay, and when was the last time you were  
11      deposed in a litigation involving Campbell,  
12      Campbell, Edwards & Conroy?

13      A. I don't know.

14      Q. More than five years ago or less than five  
15      years ago?

16      A. I don't know.

17      Q. And let me rephrase that question. When I  
18      asked that question, did you understand it  
19      to mean you were working with the Campbell  
20      law firm, or in either situation, you were  
21      for them or against them, when I asked the  
22      deposition question?

23      A. I assumed that you meant that they were my  
24      direct client.

25      Q. Okay. So now, I want to ask the followup

1 question. In the last five years, have you  
2 been deposed in a matter where Campbell,  
3 Campbell, Edwards & Conroy was not your  
4 direct client; they were on the other side?

5 A. So I don't know the time frame, as I sit  
6 here right now, without digging in my own  
7 testimony history. So I'm sure that these  
8 are answers that can be determined. I just  
9 don't know, as I sit here right now.

10 Q. Let me move on to Marshall, Dennehey,  
11 Warner, Coleman & Goggin. I'll call them  
12 "Marshall Dennehey," as we know them  
13 downstate. Have you been involved in any  
14 other matters with that law firm?

15 A. I recognize the name of the law firm, so I'd  
16 say yes, probably.

17 Q. Were you involved in matters with them or  
18 against them?

19 A. Probably both.

20 Q. And it's my understanding that they do  
21 defense work, as opposed to plaintiffs'  
22 work, that law firm. Was your involvement  
23 for the plaintiffs' side or the defendants'  
24 side?

25 A. I don't know and I don't really categorize

1 law firms in the manner that you just did in  
2 your question.

3 Q. When you worked with Marshall Dennehey, were  
4 you on the plaintiffs' side or defendants'  
5 side?

6 A. I don't remember.

7 Q. Smith & Duggan, have you ever worked with  
8 that law firm, other than for this  
9 litigation?

10 A. Yes.

11 Q. How many times have you worked with that law  
12 firm?

13 A. I don't have a specific number again, but  
14 I've worked with them before.

15 Q. More than five or less than five times?

16 A. I don't specifically know. I wouldn't want  
17 to guess.

18 Q. More than fifty or less than fifty?

19 A. I would expect less than fifty.

20 Q. Any matters involving GE Lighting that  
21 you've been involved in?

22 A. Yes.

23 Q. How many matters have you been involved with  
24 involving GE Lighting?

25 A. I think, two, that I can think of.

1 Q. And as you sit here now, what are the two  
2 that you recall?

3 A. The two that I recall, one was in Western  
4 Canada and one was in Wisconsin, I believe.

5 Q. Were any of the law firms involved in this  
6 litigation involved in either of those two  
7 matters?

8 A. I believe that Smith & Duggan was  
9 involved --

10 Q. In both?

11 A. -- in both.

12 Q. And what did the Western Canada matter  
13 involve?

14 A. It involved -- there was some uncertainty,  
15 actually, as to what it involved, but it was  
16 a food warehouse, a refrigerated food  
17 warehouse, that had a fire.

18 Q. How was GE Lighting involved in that  
19 matter?

20 A. There were some questions about that and I  
21 don't recall exactly what the answer to  
22 those questions was, but my understanding  
23 was that there was some involvement from  
24 both Philips and GE, and exactly what the  
25 involvement were from those two companies is

1 not clear to me as I sit here right now.

2 Q. Was the plaintiff making an allegation that  
3 the fire was caused by some products of  
4 Philips and/or GE?

5 A. I don't specifically recall. It may have  
6 been either Philips/GE products and/or --  
7 that is, lamps or lighting fixtures -- and I  
8 don't recall exactly what the dynamic was  
9 between those entities.

10 Q. In that particular matter, sitting here  
11 today, you don't recall whether the  
12 allegations in that Western Canada  
13 litigation involved a fixture or the lamp;  
14 is that what I got?

15 A. Well, I don't remember the exact allegations  
16 and I don't remember the exact -- who the  
17 allegations were directed to. My  
18 understanding was, to the best that I recall  
19 right now, was that there were allegations  
20 directed to GE and Philips and also  
21 potentially, the fixture manufacturer, but I  
22 don't recall exactly what the allegations  
23 were.

24 Q. Was GE or Philips the fixture manufacturer  
25 or were they the lamp manufacturer for that

1 matter?

2 A. That's hard for me to answer in part because  
3 I think those entities, in certain  
4 instances, owned both lamp manufacturing, as  
5 well as fixture manufacturing, so I don't --

6 Q. I mean, for that case. I understand that  
7 GE's got its hands everywhere, including  
8 financial products and insurance. I just  
9 meant, for that matter, were the allegations  
10 that GE had manufactured the fixture or that  
11 it manufactured the lamp or that it had  
12 manufactured both, for that particular  
13 matter?

14 MR. CAMPBELL: Object to the form.  
15 Go ahead.

16 A. Actually, the source of my confusion had  
17 nothing to do with GE, as you suggested in  
18 your question. My confusion had to do with  
19 Philips somehow owning both a fixture  
20 manufacturing, as well as lamp manufacturing  
21 entities. So I'm not sure exactly how that  
22 played out, and I know, around that same  
23 time, there was a change of hands of fixture  
24 manufacturing, where Philips purchased a  
25 fixture manufacturer. So I can't answer the

1 question as you had asked it because I don't  
2 remember exactly the timing of those events.

3 Q. In that particular case, with reference to  
4 GE only, was GE the manufacturer of a  
5 fixture or lamp that were allegedly involved  
6 in that particular case?

7 A. A lamp, as I understand it.

8 Q. What type of lamp?

9 A. I believe it was a High Intensity Discharge  
10 Metal Halide lamp.

11 Q. What model?

12 A. I don't recall.

13 Q. 750?

14 A. I don't believe it was 750.

15 Q. What opinions, if any, did you issue in the  
16 Western Canada matter?

17 A. I don't think I issued any opinions in that  
18 case.

19 Q. Were you deposed in that matter?

20 A. I was not.

21 Q. Did you issue a report in that matter?

22 A. I don't believe I did.

23 Q. Is that matter still existing -- is your  
24 file still open for that matter?

25 A. That's actually an interesting question. My



1        understanding is that the matter is no  
2        longer existing, but we're still -- we had  
3        some storage charges associated with  
4        materials that are yet unresolved.

5        Q.    Let's move on to the Wisconsin matter.    What  
6        was that matter generally about?

7        A.    The Wisconsin matter was a refrigeration or  
8        refrigerator manufacturing facility and it  
9        involved a fire at a work station in a  
10       manufacturing facility that had been  
11       allegedly caused by a HID lamp.

12       Q.    What type of HID lamp?

13       A.    I don't recall.

14       Q.    Metal Halide?

15       A.    That's my understanding.

16       Q.    Do you remember the wattage?

17       A.    I don't.

18       Q.    All right, and in that particular matter,  
19       the Wisconsin matter, were any of the law  
20       firms, Campbell, Campbell, Edwards, Marshall  
21       Dennehey, or Smith & Duggan, were they  
22       involved in that matter, the Wisconsin  
23       matter?

24       A.    I believe Smith & Duggan was involved in  
25       that matter.

1 Q. Did you issue an opinion in that matter?

2 A. I don't recall. I don't believe I did, but  
3 I don't recall specifically.

4 Q. Did you issue a report?

5 A. I don't recall issuing a report.

6 Q. Were you deposed?

7 A. I don't think I was.

8 Q. Is that matter still open?

9 A. I don't believe so.

10 Q. In the Western Canada matter, how was it  
11 explained to you why you were being retained  
12 for that matter?

13 A. I don't recall the specific task that was  
14 assigned to me, partly because a specific  
15 task is often not very clearly spelled out  
16 early on. It's more to understand the  
17 circumstances associated with an event, and  
18 that was my understanding of my  
19 participation in that case.

20 Q. Correct me if I phrase -- you were retained  
21 in that matter to attempt to determine the  
22 facts of what was alleged in that matter?  
23 If there's a better way to describe it,  
24 please.

25 A. No. I would say I think that's a reasonable

1 way. My understanding -- as is often the  
2 case, I'm retained to understand the  
3 circumstances of a specific event both from  
4 the standpoint of what is alleged to have  
5 happened, as well as what I think, from a  
6 technical perspective, did happen.

7 Q. I noticed -- we'll get to it later -- your  
8 bio, you identify origin and cause  
9 activities throughout your bio, and you  
10 belong and certain organizations have  
11 received certain certifications that go to  
12 that. Was your assignment for that Western  
13 Canada specifically as an origin and cause  
14 investigator originally or something else?

15 A. I don't think -- I mean, I think the project  
16 probably went away before the task  
17 definition was refined, but what I can say  
18 is that I did not perform the first, let's  
19 say, investigation of the file. As is often  
20 the case, my work on fires involves working  
21 with materials in the form of photographs,  
22 as well as exhibits, that have been  
23 collected by others who were at the scene  
24 before I was, and I did not visit the  
25 scene. So it's not unusual for me to

1 perform fire investigations with all of that  
2 information. Normally, I try to visit the  
3 scene, but as is the case here in the  
4 Western Canada case, the case went away  
5 before I really, let's say, engaged in  
6 significant work. So --

7 Q. Did you recommend to whomever hired you that  
8 some other expert be retained in the Western  
9 Canada matter?

10 A. I don't think I did.

11 Q. And in the Wisconsin matter, did you  
12 recommend to anyone that some other expert  
13 be hired?

14 A. It's not unusual for me to recommend others  
15 when I'm approached to address specific  
16 cases, and I know for a fact that with Mr.  
17 Cooper -- I have in the past made  
18 recommendations for him to work with others,  
19 specifically in instances where, at the end  
20 of the day, I may have been retained to work  
21 on the particular case. As to these two  
22 cases, I don't recall whether I made  
23 recommendations or not.

24 Q. How many projects have you been involved  
25 with where allegations -- there were

1           allegations involving HID lamps?

2       A.   Three or four.

3       Q.   Are two of those the Western Canada and the  
4           Wisconsin?

5       A.   Yes.

6       Q.   Is one of them Metso?

7       A.   No.

8       Q.   What are the other one or two?

9       A.   There was a fire in Virginia Beach sometime  
10           in the past involving a Philips lamp. The  
11           other case that I was involved with was the  
12           New Pig fire. That was the name of the  
13           facility where the fire occurred. That also  
14           involved a Philips lamp.

15      Q.   Were they Metal Halides?

16      A.   That is my understanding.

17      Q.   Do you remember the wattage?

18      A.   I don't.

19      Q.   And that was for both of those? They both  
20           involved Metal Halides?

21      A.   That is my understanding.

22      Q.   And were you retained in those matters on  
23           behalf of Philips or the party pursuing  
24           Philips?

25      A.   My understanding is that I was retained by

1 parties representing the interests of  
2 Philips.

3 Q. In those matters, did you provide deposition  
4 testimony?

5 A. I don't -- to the best of my recollection, I  
6 don't believe I did.

7 Q. Did you issue a report in either of those  
8 matters?

9 A. I did.

10 Q. In both or just one?

11 A. I issued a report in the New Pig matter.

12 Q. Just to get --

13 A. It's two words, just like you hear it.

14 Q. What were your opinions in the New Pig  
15 matter?

16 A. My primary role in the New Pig matter, to  
17 the best of my recollection, had to do with  
18 fire causation and how the fire spread.

19 Q. That's different from your role in the Metso  
20 matter; correct?

21 A. That's correct.

22 Q. What was your role in the Virginia Beach  
23 fire?

24 A. My role didn't really get defined during the  
25 course of that project. I performed an

1 inspection. I made measurements of the fire  
2 scene, provided that information to my  
3 client, and may have had some telephone  
4 conversations, but we never really defined  
5 what my role was.

6 Q. Prior to today, have you ever visited  
7 Metso's Clarks Summit facility?

8 A. Yes.

9 Q. How many times were you there?

10 A. I've been there once.

11 Q. When were you there?

12 A. I was there on April 8th, 2010.

13 Q. And who was with you, if anyone?

14 A. My recollection is that Mr. Campbell was  
15 there and Mr. Cooper may have been there,  
16 but I don't specifically remember.

17 Q. And while you were there, was your time  
18 limited or were you allowed to spend as much  
19 time as you needed at the Metso facility?

20 A. I don't have any recollection of my time  
21 being limited.

22 Q. And prior to today, have you ever spoken  
23 with any former or present Metso employees?

24 A. Yes.

25 Q. How many times have you had conversations

1 with former or present Metso employees?

2 A. Many times. I haven't kept track.

3 Q. And whom have you spoken with?

4 A. Mostly people in Finland.

5 Q. Have any of those conversations involved any  
6 allegations or matters involving this  
7 litigation?

8 A. No.

9 Q. What were the nature of those conversations  
10 with the Metso employees in Finland?

11 A. These were highly technical discussions  
12 regarding engineering consulting and  
13 scientific challenges that the company  
14 faced.

15 Q. Okay. Did any of those involve lighting  
16 technology?

17 A. No.

18 Q. If you could turn two pages in to the  
19 second-to-last page of plaintiff's exhibit 1  
20 or Kytomaa exhibit 1. The old notice that  
21 you received, did it also have a Schedule  
22 A?

23 A. It may have.

24 Q. And did that Schedule A look similar to this  
25 Schedule A?



1 A. I mean, if you were to put it in front of  
2 me, I could certainly make a comparison. I  
3 didn't undertake the exercise of comparing.

4 Q. With respect to this Schedule A, where are  
5 the documents that are responsive to each of  
6 those requests?

7 A. In my file in front of me.

8 Q. And that's the two binders?

9 A. Yes.

10 Q. Do these two binders that we have here make  
11 up your whole file?

12 A. Yes.

13 MR. CAMPBELL: Just to be clear,  
14 there's also a disk.

15 MR. STERN: Okay. We're going to  
16 mark these as 7, 8, and 9. I see that there  
17 are numbered tabs. Does one binder start  
18 with 1 and then it continues through the  
19 tabs to the second binder?

20 MR. CAMPBELL: One binder is sort  
21 of a document file and the second one is, I  
22 think, just the plaintiff's expert reports.  
23 Yes. Plaintiff's expert reports. So a  
24 binder of documents, the disk, and  
25 plaintiff's expert reports.

1 (Binder marked exhibit number 7 for  
2 identification.)

3 (Binder marked exhibit number 8 for  
4 identification.)

5 (Disk marked exhibit number 9 for  
6 identification.)

7 (Discussion off the record.)

8 Q. Let me show you a document that's been  
9 marked as Kytomaa exhibit 2. (Indicating.)  
10 Are you familiar with the Federal Rules of  
11 Evidence with respect to expert disclosures?

12 A. Generally, yes.

13 MR. CAMPBELL: I think you showed  
14 him the Federal Rules of Civil Procedure.

15 Q. I'm sorry. The Federal Rules of Civil  
16 Procedure relative to expert disclosures.

17 A. So I'm not aware of the difference between  
18 your question and what Mr. Campbell said --

19 Q. Fair enough.

20 A. -- but generally, I am aware of the  
21 expectations of experts in the context of  
22 Federal Courts.

23 Q. If I could direct your attention to the  
24 bottom right section, "Disclosure of Expert  
25 Testimony," number 2, and then if you go

1 down, you'll see there's a listing of the  
2 items that the report must contain. Do you  
3 see that section?

4 A. Yes.

5 Q. Great. Looking at the first point, "A  
6 complete statement of all opinions the  
7 witness will express and the basis for  
8 them." Does your report satisfy that  
9 requirement?

10 A. Yes.

11 Q. And looking at number 2, "The data or other  
12 information considered by the witness in  
13 forming them," and "them" is referring to  
14 the opinions. Does your report satisfy that  
15 requirement?

16 A. Yes.

17 Q. Going to number 3, "Any exhibits that will  
18 be used to summarize or support them," and  
19 again, "them" is being used to refer to your  
20 opinions. Does your report satisfy this  
21 requirement?

22 A. Yes. I mean, my binder right in front of me  
23 actually has a lot of that material, which  
24 is an addendum, in essence, to my report.

25 Q. So your binder, is it number 7, number 8, or

1 both?

2 A. Number 7. Number 8 is mostly the  
3 depositions of plaintiff's experts. I'm  
4 sorry. Not the depositions. The reports of  
5 plaintiff's experts. So binder 7. Binder  
6 7, as well as the disk that is enclosed in  
7 binder 7.

8 Q. Exhibit number 9?

9 A. That is correct.

10 Q. So binder number 7 and the disk, exhibit  
11 number 9, serve as an addendum to your  
12 report, specifically with reference to the  
13 requirement number 3, any exhibits that will  
14 be used to summarize or support your  
15 opinions?

16 THE WITNESS: Can you read that  
17 entire question, please?

18 (The previous question was read  
19 back by the court reporter.)

20 Q. I should have said exhibit number 9. The  
21 disk is number 9.

22 A. So what is the question?

23 Q. Exhibit number 7 and exhibit number 9, you  
24 said that they served as an addendum to your  
25 report, and that was in my question, any

1 exhibits that will be used to support or  
2 summarize your opinions, and I'm making sure  
3 it is exhibit number 9 and exhibit number 7  
4 that you're referring to as the exhibits  
5 that will be used to summarize or support  
6 your opinions.

7 A. Yes, those do contain the exhibits that I  
8 may use to summarize or support my opinions,  
9 but I may also develop demonstrative  
10 exhibits to demonstrate my opinions at a  
11 later time.

12 Q. And those are not contained within exhibits  
13 7, 8 or 9?

14 A. That's correct. Any demonstrative exhibits  
15 that I create in the form of, let's say,  
16 graphics, text, such as PowerPoint slides,  
17 or animations, are not included in exhibits  
18 7, 8, or 9.

19 Q. And they're also not included in your  
20 report, which we haven't gotten to just yet?

21 A. That's correct.

22 Q. Okay. Going to number 4 on this list, "The  
23 witness's qualifications, including a list  
24 of all publications authored in the previous  
25 ten years." Does your report satisfy that

1 requirement?

2 A. Yes.

3 Q. The next one, "A list of all other cases in  
4 which, during the previous four years, the  
5 witness testified as an expert at trial or  
6 by deposition," and does your report satisfy  
7 that requirement?

8 A. Yes.

9 Q. And then finally, the last, "A statement of  
10 the compensation to be paid for the study  
11 and testimony in the case." Does your  
12 report satisfy that requirement?

13 A. Yes.

14 Q. So if we review your report, your report  
15 satisfies these six requirements of the  
16 Federal Rules of Civil Procedure and we'd  
17 have all of your opinions, the bases for  
18 opinions, the data, the exhibits, your  
19 publications and qualifications the last  
20 ten years, your list of testimony in the  
21 last four years, and your compensation;  
22 correct?

23 MR. CAMPBELL: Object to the form  
24 of the question, go ahead.

25 THE WITNESS: Would you read that

1 back, please.

2 (The previous question was read  
3 back by the court reporter.)

4 A. Yes. I think your question actually omitted  
5 the materials that I brought here as an  
6 addendum to my report, but all of the  
7 materials that I brought here today satisfy  
8 items 1 to 6 under Disclosure of Expert  
9 Testimony, section 2(B).

10 Q. All right. Let me show you a document we've  
11 marked as Kytomaa exhibit 3. (Indicating.)  
12 When you're ready, just let me know.

13 A. Yes.

14 Q. What are your job functions as a Corporate  
15 Vice-president?

16 A. So really, as a Corporate Vice-president, I  
17 have, I'd say, multiple functions. The  
18 functions unique to the title of Corporate  
19 Vice-president has to do with meeting with  
20 my colleagues and identifying technical  
21 areas that we should be consulting in. It's  
22 a business function.

23 Q. Okay, and what are your job duties -- what  
24 is a Practice Director?

25 A. So I practice and run our group that

1 specializes in thermal sciences.

2 Q. What is thermal sciences?

3 A. The thermal sciences is best embodied by the  
4 technical disciplines of combustion,  
5 thermodynamics, heat transfer, fluid  
6 mechanics, chemical kinetics.

7 Q. And I think we're going to see most of those  
8 you actually mention in here in this  
9 document, specifically within the wording of  
10 the paragraphs; correct?

11 A. In this document and other places, that's  
12 correct.

13 Q. Okay, and as the document says, it was  
14 printed out on January 24th of 2011 from the  
15 Exponent website. Have you seen your bio  
16 from the Exponent website before I handed it  
17 to you?

18 A. I would really hope so, since I wrote it.

19 Q. That was going to be my next question. Did  
20 you write your own bio or did somebody write  
21 the bio for you?

22 A. I wrote my own bio.

23 Q. Okay. In reading this bio -- is it okay if  
24 we call it a bio?

25 A. We can call it professional profile, but.



1       You can call it what you'd like.

2       Q.   Okay. "Professional profile" is fine. This  
3       professional profile, I don't see mentioned  
4       in here electrical engineering. Did I miss  
5       that or is that not one of your specialties?

6       A.   I'm a mechanical engineer, and as a  
7       mechanical engineer, I certainly practice in  
8       areas that include electrical equipment.  
9       That's fairly routine.

10      Q.   But you didn't mention in this professional  
11      profile your practicing specifically in  
12      electrical equipment; do you?

13      A.   I do get involved in electrical equipment  
14      broadly in the context of both mechanical  
15      engineering work, as well as fire  
16      investigation, and so that is the case --  
17      and let me just answer your question,  
18      specifically.

19      Q.   Thank you.

20      A.   For example, metal smelting industries will  
21      include electrical equipment and strong  
22      electrical currents. Power generation  
23      equipment typically includes electricity  
24      that I get involved with.

25      Q.   Maybe it was my question because we still

1 haven't answered the question. There's  
2 nowhere in this professional profile where  
3 it specifically says that you get involved  
4 with electrical equipment; does it?

5 A. I'm not sure I understand your question.

6 Q. I'll try it again. Can you show me where in  
7 your professional profile it specifically  
8 states that you have experience with or  
9 specialize in electrical equipment?

10 A. Okay. So there are multiple examples in my  
11 profile to that effect and I'll give you one  
12 specific one. If you look at the first  
13 paragraph, five lines up from the bottom,  
14 says "instrumentation." Almost exclusively,  
15 instrumentation is electrical in character.

16 Q. Okay.

17 A. So that's one example, but there are many  
18 other specific examples of that. Now, if  
19 your question -- if I understood your  
20 question correctly, you were looking for  
21 specific words that you had in your  
22 question.

23 Q. Correct.

24 A. I don't have those specific words.

25 Q. Thank you.

1 A. That is, I'm a mechanical engineer. The  
2 practice is in the area of electrical  
3 systems, quite often. I am not a  
4 professional engineer in the discipline of  
5 electrical engineering.

6 Q. That's exactly what I was asking you.  
7 You've clarified it for me. Thank you. Is  
8 it mentioned anywhere in your professional  
9 profile the lighting industry or anything  
10 relative to the lighting industry?

11 A. It does not, specifically.

12 Q. Does it mention anywhere in your  
13 professional profile any experience you've  
14 had with HID lamps?

15 A. No. My professional profile doesn't happen  
16 to mention my experience in HID lamps.

17 Q. And although it doesn't, we've already  
18 talked about that; is that correct?

19 A. That's correct.

20 Q. Does your professional profile mention  
21 anything relative to experimental  
22 psychology?

23 A. No, it doesn't.

24 Q. Some of them are really easy; right? Does  
25 your professional profile mention anything

1 about psychology, in general?

2 A. It does not.

3 Q. Okay. Does your professional profile  
4 mention anything about human factors and the  
5 study of human factors?

6 A. It does not.

7 Q. Does your professional profile mention  
8 anywhere that you belong or ever belonged  
9 to the Human Factors and Ergonomics Society?

10 A. No, my professional profile does not say  
11 that I belong to that particular society.

12 Q. Okay. Have you ever been a member of that  
13 society?

14 A. I have not.

15 Q. Okay.

16 A. But this professional profile does not -- I  
17 don't think it mentions any societies that I  
18 belong to. So even if I did, it wouldn't be  
19 here.

20 Q. Okay. I'm with you, and I think with your  
21 report, you've actually got some listings  
22 accompanying your report; correct?

23 A. I may have.

24 Q. We'll take a look at that. Do you have any  
25 degrees in psychology?

1 A. I do not.

2 Q. Do you have any degrees in ergonomics?

3 A. To the extent that the practice of  
4 mechanical engineering slightly overlaps  
5 with ergonomics, I would say yes, but not  
6 specifically. I don't have any specific  
7 degree in the area of ergonomics.

8 Q. Do you have any degrees in human factors?

9 A. I'd say the same. To the extent that human  
10 factors overlaps slightly with the practice  
11 of mechanical engineering, I have some  
12 knowledge, but I do not have a specific  
13 degree named a degree in human factors.

14 Q. Do you have any degree in the lighting  
15 engineering?

16 A. I don't know of the existence of any  
17 degrees, so I don't know that anybody has  
18 degrees in lighting engineering.

19 Q. Have you received any professional honors in  
20 psychology?

21 A. I guess that question can be interpreted a  
22 number of different ways.

23 Q. I'll rephrase it. You've got this column on  
24 the right-hand side captioned "Credentials &  
25 Professional Honors," and there are a few

1 listed here, and I'm assuming that these are  
2 all of them and that's why you've listed  
3 them here, but for the chance that they're  
4 not all listed here, I'm asking the  
5 question, do you have any professional  
6 honors, as you've used it as the caption, in  
7 psychology?

8 A. That clarification helps. The answer is  
9 no.

10 Q. Same thing. I'm going to go down a list of  
11 items. Do you have any professional honors  
12 in ergonomics?

13 A. To the extent that your question  
14 specifically refers to items that I would  
15 list under "Professional Honors" in my  
16 professional profile document, the answer is  
17 no.

18 Q. And again, do you have any professional  
19 honors in human factors?

20 A. To the extent that your question  
21 specifically refers to professional honors  
22 that appear on my professional profile  
23 document, no.

24 Q. So in light of your answer, I need to do a  
25 followup. Are there any professional honors

1       that you have received in human factors  
2       which are not listed in your professional  
3       profile?

4     A.   Not that I can think of.

5     Q.   The first line of your professional profile,  
6       which you wrote, says "Dr. Kytomaa  
7       specializes in mechanical engineering and  
8       the analysis of thermal and flow  
9       processes." Does that have anything to do  
10      with lighting technology?

11    A.   Sure.

12    Q.   And how does that deal with lighting  
13      technology?

14    A.   Lighting technology is all about a source of  
15      energy in the form of significantly heat, as  
16      well as light, the absorption or emission of  
17      that source of energy through structures,  
18      whether they be structures of the lamp  
19      itself, the fixture itself, reflection of  
20      that in the form of either, let's say,  
21      longer wave length or infrared radiation,  
22      shorter wave length, ultraviolet or visible  
23      light. The performance of the light itself  
24      and during the course of its life has all to  
25      do with the mechanical engineering

1       considerations having to do with the  
2       strength of materials. The thermodynamics  
3       associated with the gases and constituents  
4       that are introduced into the quartz tube of  
5       certain types of lamp. It also has to do  
6       with essentially the mechanisms that exist  
7       associated with the changes in the optical  
8       characteristics of certain structures in  
9       lighting that result in a progressive, say,  
10      change over the life of these lights that  
11      have an influence on the mechanical  
12      performance of the lights, as well as the  
13      optical performance of the lights. So I  
14      could go on I think in more detail, but I  
15      think that that answers your question.

16    Q. Yes. Thank you. Going down, the last  
17      sentence of this paragraph, you've listed a  
18      number of your projects that you've been  
19      involved in; correct?

20    A. Yeah.

21    Q. And none of the listed items here involved  
22      HID lighting; correct?

23    A. Yeah. The ones on the list here, which  
24      don't purport to be comprehensive, do not  
25      include HID lighting, that's correct.



1 Q. The first sentence of the next paragraph,  
2 "Dr. Kytomaa has decades of experience in  
3 the area of dynamics and analysis of piping  
4 systems containing both liquids and gases."  
5 Is that somehow related to the HID lighting  
6 involved in this litigation?

7 A. I think that the reference that this  
8 particular paragraph makes is to systems  
9 that are not like HID lighting, but I think  
10 the thermodynamics and the mechanical  
11 engineering that is involved there has  
12 significant overlap, actually, with what  
13 happens in a tube, how a tube is  
14 pressurized, what the stress distribution  
15 might be in a tube, those kinds of things.

16 Q. So it all relates to the actual product  
17 itself, the lamp itself?

18 A. So perhaps I'll give you a fuller answer.  
19 The motivation behind the second paragraph  
20 in my professional profile is for an  
21 application that is different from HID  
22 lighting. The underlying fundamentals  
23 associated with the work that was done there  
24 overlaps significantly with the underlying  
25 fundamentals associated with the mechanics

1 of HID lamps.

2 Q. How they work?

3 A. How they work, how the gases perform, how  
4 the tube performs. Things of that kind.

5 Q. So it's all related to the product itself,  
6 how it operates?

7 A. I'm not sure I understand the question.

8 Q. What you're talking about sounds to me as  
9 though your expertise, as described in here  
10 and then inferenced, since it doesn't  
11 mention HID, you've told us we've got to  
12 take it somehow and inference it over to HID  
13 lighting, that it relates to the components  
14 of the lamp itself and the internal gases of  
15 the lamp itself and how the lamp itself  
16 operates?

17 A. I don't think that's what I said. I was  
18 trying to be clear, but evidently, I didn't  
19 succeed.

20 Q. Yeah.

21 A. The point I was trying to make in answer to  
22 your question is that the underlying  
23 engineering disciplines associated with the  
24 second paragraph in my professional profile  
25 are directly relevant to the underlying

1 disciplines that help you understand how HID  
2 lights perform. Okay? The second paragraph  
3 in my professional profile does not describe  
4 a project associated with HID lighting; in  
5 fact, far from it, but the underlying  
6 engineering fundamentals do overlap with the  
7 engineering fundamentals associated with HID  
8 lighting.

9 Q. The general theories that underlie the  
10 engineering involved in what's being  
11 described in this second paragraph you're  
12 saying could somehow be used for the  
13 performance of an HID lamp?

14 A. The fundamental engineering disciplines have  
15 some commonality between those two very  
16 different applications.

17 Q. And you're basically talking about the  
18 theory; not specifics. The theory that  
19 underlies this engineering discipline can be  
20 applied to the theory of the HID light?

21 A. I think I've answered that question fairly  
22 clearly. I would simply say I don't  
23 understand the question that you just  
24 asked.

25 Q. So is it that the specific engineering

1 dynamics and analysis of the piping systems  
2 containing both liquids and gases, that that  
3 is specifically applicable to HID lamps, or  
4 are you saying that it's the underlying  
5 engineering concepts and theories that went  
6 into that that apply to HID lamps?

7 A. I'm talking about the underlying engineering  
8 concepts.

9 Q. Okay. The last sentence of that paragraph  
10 says, "This experience includes the  
11 characterization of rapidly varying  
12 pressures and forces caused by the  
13 interruption of rotating equipment or the  
14 sudden closing of valves and their  
15 effects." Is this all still related to what  
16 is being described in the first sentence,  
17 the piping systems containing both liquids  
18 and gas, or is that something that maybe  
19 should have been a separate paragraph?

20 A. Are you offering editorial suggestions?

21 Q. No. I'm just trying to see if they're tied  
22 in or are we speaking of something  
23 completely different now?

24 MR. CAMPBELL: Objection.

25 A. The description at the end of the second

1 paragraph of my professional profile of the  
2 characterization of rapidly varying  
3 pressures and forces caused by the  
4 interruption of rotating equipment or the  
5 sudden closing of valves and their effects  
6 talks broadly about systems, some of which  
7 relate to piping systems, such as valves  
8 within piping systems, some of which relates  
9 to systems quite different from that,  
10 specifically rotating equipment or turbo  
11 machinery, things like pumps, fans,  
12 compressors, turbines.

13 Q. And those are different than an HID lamp --  
14 the HID lamp that's involved in that  
15 litigation?

16 A. Correct.

17 Q. Do you know Professor Tom Eagar?

18 A. Yeah.

19 Q. Okay. Have you ever worked with Professor  
20 Tom Eagar?

21 A. I've worked many times with him, against  
22 him. I see him fairly routinely.

23 Q. Is that because you're an Associate  
24 Professor at MIT?

25 A. I've encountered him at MIT, but I spend all

1 of my time doing engineering consulting  
2 full-time. So I do not occupy an academic  
3 position today and -- but I see him in his  
4 function as an engineering consultant,  
5 because he spends a lot of time doing that  
6 sort of thing, too.

7 Q. You mention in the next paragraph that you  
8 are an Associate Professor of Mechanical  
9 Engineering at MIT where you were head of  
10 the Fluid Mechanics Laboratory. What is  
11 that?

12 A. That's a lab that consists of around a half  
13 dozen professors and we did research in a  
14 number of different areas.

15 Q. Any involving HID lamps?

16 A. Specifically, HID lighting, I don't believe  
17 that there were specific lighting projects.  
18 There may have been things related to it,  
19 but I don't recall any specific HID lighting  
20 projects.

21 Q. It says that you held a Visiting  
22 Professorship at Helsinki University of  
23 Technology?

24 A. Yes.

25 Q. Was there a specific topic or topics that

1       you taught there as a Visiting Professor?

2       A. That was mostly a research position and we  
3       were doing research in the area of controls  
4       and I was doing also work in the area of  
5       control of, let's say, flow processes.

6       Q. When you say "controls," mechanical  
7       mechanisms?

8       A. Well, what I mean by "controls" would be  
9       sort of electrical control algorithms to  
10      control valves and things of that kind to  
11      respond to the performance of a process to  
12      guide it to perform in an intended way.

13      Q. And at the DOE Pacific Northwest Laboratory  
14      in Washington, what did you do there?

15      A. There, I spent most of my time working with  
16      the DOE folks on instrumentation for  
17      characterization of radioactive sludges.  
18      This is electrical equipment specifically  
19      designed to perform or to characterize  
20      sludges without having people involved, so  
21      that the people don't get exposed to  
22      radioactivity.

23      Q. Okay, and finally, it says you served as a  
24      lecturer in the Mechanical Department at  
25      MIT. What did you lecture there?

1 A. That was just a continuation of my time as a  
2 Professor there. I had the appointment of  
3 lecturer, but actually, I didn't lecture. I  
4 became a full-time consultant.

5 Q. Okay. Let me show you a document that has  
6 been marked as Kytomaa exhibit 4. Do you  
7 recognize this document? (Indicating.)

8 A. Yes, I do.

9 Q. Great. And is this your report?

10 A. It is.

11 Q. Is this your final report for this  
12 litigation?

13 A. It is my report in this litigation.

14 Q. Did you have any written versions of  
15 opinions prior to this copy?

16 A. Is your question intended to distinguish  
17 between the report and opinions?

18 Q. No. Your opinions that are typed and  
19 printed in this report, did you have any  
20 versions of those opinions in typed format  
21 before this report?

22 A. No. This is an evolving document that is  
23 what you now have in front of you.

24 Q. So as an evolving document, what happened to  
25 the prior rounds of evolution?



1 A. Well, first, I think that your question  
2 seems to suggest that there were specific  
3 prior rounds. I don't recall any specific  
4 prior rounds, but when you write a report --  
5 I'll give you an example -- if you look at  
6 the first page, first you start with Section  
7 1, specifically with the word "In." So I  
8 guess, by your question, that would be a  
9 prior round of the report, that first word,  
10 and every word that you add contributes to  
11 an evolving document that grows. So if you  
12 understand my meaning --

13 Q. Sure.

14 A. -- that's the way I write a report.

15 Q. We're not communicating right now.

16 A. Okay.

17 Q. I've got to rephrase the question for you.

18 A. Okay.

19 Q. This version that I'm looking at here, is  
20 this the only version you ever sent to  
21 anybody to take a look at?

22 A. That's my understanding, but I don't  
23 specifically recall.

24 Q. When did you first begin preparing this  
25 version of your report?

1 A. I don't remember a date.

2 Q. How about a month?

3 A. I don't know.

4 Q. A year?

5 A. Well, the date of the report is August 31st,

6 2010, and I may have taken weeks or months

7 to write the report. I don't specifically

8 remember. Often times, the duration that I

9 take to write a report is related to when I

10 am asked to write a report, which typically,

11 after which I would begin to write a report

12 and the deadline of the report by which I

13 would have finished writing the report.

14 Q. And I have experts, too, so I know about

15 this, and in fact, you're an expert for our

16 firm in a few matters.

17 A. I am?

18 Q. You sure are.

19 A. Okay.

20 Q. What attorneys have provided you with any

21 input relative to the contents or the

22 wording that we see in this report, if any?

23 MR. CAMPBELL: What was the

24 question?

25 (The previous question was read

1 back by the court reporter.)

2 MR. CAMPBELL: You can answer, if  
3 any, whether or not there was.

4 A. The file material that I receive in a case,  
5 such as this one, but most other cases that  
6 I also work on, will be provided by the  
7 attorneys and I then base my report on what  
8 they provide me in that process. So that  
9 would include -- well, I'm not going to  
10 elaborate through all of the things that are  
11 in my report, but it includes everything  
12 that I have in my report and the materials  
13 that I brought here today, including --

14 Q. I must not have been clear.

15 A. Okay.

16 Q. This has nothing to do with what I was  
17 asking or intended to ask, I should say. I  
18 wasn't clear.

19 A. Okay.

20 Q. I want to know if any attorneys at all have  
21 provided you with any commentary of any kind  
22 regarding any of the words in this report at  
23 any of its stages of evolution that resulted  
24 in you making any changes to that report.

25 A. During the course of my writing the report,

1 I would have had discussions with the  
2 attorneys on what I'm writing into my  
3 report. I don't recall any specific changes  
4 that I would have made to the report based  
5 on those discussions, but essentially, they  
6 want to know how it's going. I commonly  
7 will have telephone discussions saying,  
8 "Okay, here is how it's going." I may be  
9 running late in writing the report and we  
10 certainly would have discussions associated  
11 with, you know, what their expectation is of  
12 the scope under my area of expertise that  
13 should appear in the report, but I don't  
14 recall specific changes, and I don't think I  
15 made any specific changes.

16 Q. So you just talked about conversations. At  
17 any point in time, did you send to your  
18 attorneys a written e-mail, a written fax, a  
19 written letter, a written document of any  
20 kind that contains your opinions which are  
21 different than what appeared in this  
22 report?

23 A. I don't believe I did. Certainly, as I sit  
24 here today, I don't recall any such  
25 exchanges.

1 Q. Have you ever been personally involved with  
2 any experiments or tests involving High  
3 Intensity Discharge lamps?

4 A. Yes.

5 Q. Okay. What experiments have you been  
6 involved in or tests?

7 A. I've performed tests where I've  
8 intentionally caused non-passive failures of  
9 lights and lamps.

10 Q. And why were you performing those tests?

11 A. I wanted to understand the speed the  
12 fragments could leave the lamp at and I  
13 wanted to understand the dynamics of these  
14 particular events.

15 Q. Was it a single test or more than one test?

16 A. Multiple tests.

17 Q. Were they performed all relative to the same  
18 project?

19 A. I think so, to the best of my recollection.

20 Q. What project were you working on that  
21 involved these tests that we're talking  
22 about?

23 A. That was a project related to the Western  
24 Canada case.

25 MR. COOPER: Could we take a break

1 here?

2 (Recess.)

3 Q. (Cont'd. By Mr. Stern) So we were just  
4 talking about the testing or multiple tests  
5 that you had performed to intentionally  
6 cause NPFs relative to the Western Canada  
7 case; correct?

8 A. Yes.

9 Q. Okay, and we took a break at counsel's  
10 request?

11 A. Yes.

12 Q. And during that break, did you speak with  
13 counsel?

14 A. I did.

15 Q. What did you talk about?

16 MR. CAMPBELL: Don't answer the  
17 question.

18 MR. STERN: Are you instructing the  
19 witness not to answer?

20 MR. CAMPBELL: I am, based upon the  
21 conduct of Mr. Wolfe at the Rhiner  
22 deposition. So we'll use those same rules,  
23 for the time being. Mr. Rhiner was  
24 repeatedly instructed not to answer  
25 questions or that question that I posed to

1 Mr. Rhiner.

2 MR. STERN: Okay.

3 Q. Going back to that discussion we were just  
4 having, who asked you or suggested to you to  
5 perform those tests?

6 A. I think I chose to do the tests myself.

7 Q. And did you, prior to the test, discuss your  
8 going to do the test with anyone?

9 A. Yes. I mean, typically, the scope of the  
10 work that I do is something that I would  
11 share with whoever I am doing the work for.

12 Q. And in that particular case, was it someone  
13 from the firm of Smith & Duggan?

14 A. Yes.

15 Q. And as a result of those tests, did you  
16 collect or gather or create any documents  
17 with the data from the test?

18 A. No.

19 Q. Did you create any documents reflecting the  
20 outcome of those tests?

21 A. No.

22 Q. Was there anything put in writing at all  
23 relative to those tests?

24 A. I don't think there was.

25 Q. Did you send any written communications to

1 Smith & Duggan about the outcome of those  
2 tests?

3 A. No, I wouldn't have needed to do that.

4 Q. Why not?

5 A. Because Mr. Cooper was present for those  
6 tests.

7 Q. Counsel was present?

8 A. Yes.

9 Q. That's Mr. Cooper that's here today?

10 A. That's correct.

11 Q. When you performed those tests, where did  
12 you perform those tests?

13 A. In my lab.

14 Q. And was anyone else present when you  
15 performed those tests?

16 A. Engineers that report to me. Yes.

17 Q. At that time, were you with Exponent?

18 A. Yes.

19 Q. So people employed by Exponent?

20 A. Correct.

21 Q. Was the only outsider Mr. Cooper?

22 A. Yes.

23 Q. Okay, and were those tests being performed  
24 on behalf of Mr. Cooper or the ultimate  
25 client?



1 A. I was a consulting expert for Mr. Cooper, as  
2 I understand it. The relationship that Mr.  
3 Cooper has with his client is not  
4 something -- I just see the relationship  
5 between me and Mr. Cooper.

6 Q. And that's different than your relationship  
7 in this case; correct?

8 A. I was retained in this particular case as a  
9 testifying expert, which was not the  
10 function that I served in this other case.

11 Q. Did anybody that was in attendance make any  
12 notes during those tests?

13 A. I don't believe so.

14 Q. Who else from Exponent was present?

15 A. Vijay Somandepalli.

16 Q. Anyone else?

17 A. There may have been, but I don't  
18 specifically recall.

19 Q. Vijay is also involved in this litigation?

20 A. He's been supporting me, yes.

21 Q. Are you aware of anybody by the name of  
22 Duncan Glover?

23 A. Yes.

24 Q. How are you aware of Duncan Glover?

25 A. I'm not sure I understand that question.

1           How am I aware of him?

2       Q.   Yes.

3       A.   Very well.

4       Q.   What is your relationship, if any, with Mr.  
5           Glover?

6       A.   It's very good.

7       Q.   Is it professional or personal?

8       A.   It's, I think, a little bit of both.   We  
9           share Christmas cards.   I certainly go out  
10          of my way to say hi to him if he's around  
11          and I expect that he'd probably do the same  
12          with me.

13      Q.   What was the outcome of those tests?

14      A.   That we were successful in creating  
15          artificially induced non-passive failures.

16      Q.   And after you were successful in creating  
17          NPFs, did that end that line of inquiry?  
18          Was that the ultimate goal or did you then  
19          do some more tests or investigation or  
20          experimentation?

21                   MR. COOPER:   I would object to the  
22          question.   You're going into an area of  
23          consulting --

24                   MR. CAMPBELL:   I'll have to do it.  
25          He was retained as a consulting engineer,

1 non-testifying, that the material is  
2 confidential, so he's not going to answer  
3 those questions, and he's not going to rely  
4 upon them in connection with this case.  
5 It's not part of this case. It's not a part  
6 of his reports.

7 MR. STERN: So simulating a  
8 non-passive failure is not related to this  
9 case?

10 MR. CAMPBELL: The work that he did  
11 in that case is not related to this case.  
12 It wasn't involved in this case. He's not  
13 using it, he's not relying on it, et  
14 cetera. You went beyond -- he described the  
15 work that he did on the non-passive  
16 failure. You just asked him a different  
17 question, "What else did you do? How else  
18 did you serve as a consulting engineer?" I  
19 forget the words, but a non-testifying  
20 engineer in an unrelated case, so -- he told  
21 you about the non-passive failure thing he  
22 did but then you just asked, "What else did  
23 you do?"

24 MR. STERN: Yes. I believe in the  
25 other case, you're correct about consulting

1 experts. We all use them, hopefully. In  
2 that other case, they couldn't get to him  
3 without a court order --

4 MR. CAMPBELL: Right.

5 MR. STERN: -- but that doesn't  
6 apply to this case, which is a different  
7 case. All of his past experiences as your  
8 expert are actually available for  
9 cross-examination.

10 MR. CAMPBELL: I disagree because  
11 if that were the case then, in order to,  
12 quote, get to a non-testifying expert, all  
13 you'd have to do is depose him in another  
14 case and then you could discover that which  
15 is not directly discoverable in the primary  
16 case.

17 MR. STERN: Okay.

18 Q. Have you ever worked for Metso Paper?

19 A. Metso is a recent name for a conglomerate,  
20 and I've worked for prior entities or, let's  
21 say, entities that are, in essence, Metso  
22 with its prior names.

23 Q. Is that the Finland communications that you  
24 spoke about earlier?

25 A. Yes.

1 Q. Any work done for Metso Paper U.S.  
2 facility?

3 A. I don't recall. It's possible. There was a  
4 company, a subsidiary of a company called  
5 Valmet in Wisconsin, I believe, that I've  
6 worked with in the past that I don't know  
7 whether that's part of Metso or not.

8 Q. What type of work did you perform on that  
9 project that's coming to mind?

10 A. It had to do with high-speed paper machines  
11 and some of the, let's say, the bottlenecks  
12 associated with increasing the production  
13 speed of paper machines.

14 Q. I don't think I asked you this earlier. The  
15 Wisconsin matter that you spoke about  
16 involving an HID lamp, who was the  
17 manufacturer of the HID lamp in that case?

18 A. I think it was GE.

19 Q. I had Western Canada and I had GE, and for  
20 the Virginia Beach and New Pig, I had wrote  
21 down Philips for each of those; is that  
22 correct?

23 A. That is my understanding.

24 THE WITNESS: Sorry. Could you  
25 restate that question, re-read it, please?

1 (The previous question was read  
2 back by the court reporter.)

3 A. Actually, that's not quite correct. There's  
4 some question as to whether it was GE or  
5 Philips in the Western Canada case, and I  
6 think I had stated that already.

7 Q. Were you hired for Philips or for GE?

8 A. That was a joint retention.

9 Q. I'm going to go to the back of your report,  
10 where you have the history. I want to go  
11 through each of those quickly with you.

12 Do any of these cases that you've listed on  
13 these two pages involve HID lighting?

14 A. No.

15 Q. And just going down the list, I'll start  
16 with the first one. Were you for the  
17 plaintiff's side or the defendant's side in  
18 Provenza versus Yamaha? This chart that you  
19 created doesn't reflect whether you were for  
20 the plaintiff's or defendant's side. For  
21 Provenza versus Yamaha --

22 A. That was defendant.

23 Q. Betsey versus Eldean?

24 A. That was plaintiff.

25 Q. And El Dorado versus Ingersoll-Rand?

1 A. Defendant.

2 Q. Rose Marie Holt versus Cascade Candle?

3 A. Plaintiff.

4 Q. Metrokane versus Built New York?

5 A. Plaintiff.

6 Q. Employers Insurance versus Medline?

7 A. Defendant. Actually, I don't recall --

8 yeah. I don't recall whether it was

9 plaintiff or defendant on that one,

10 specifically.

11 Q. Who was the attorney that you were reporting

12 to in that case?

13 A. Oh, I don't remember.

14 Q. Richard Lueders versus Key Hospitality?

15 A. Defendants.

16 Q. Joseph Beuregard versus Altec?

17 A. That's defendant.

18 Q. Colour Quest versus Total Downstream?

19 A. I'm not sure I can break it down into

20 whether it was plaintiff or defendant. I

21 can tell you the parties and who was pitted

22 against who, but I don't know who was the

23 named defendant or named plaintiff.

24 Q. In this caption, as it's typed here, who was

25 the party that retained you or you were

1 working on behalf of?

2 A. So this is a civil action in the Court of  
3 Law in London and the two parties opposed to  
4 one another were Total and Chevron. Total  
5 is a subsidiary of Texaco. Sorry. Let me  
6 restate. Total is a French oil company.  
7 Chevron has a subsidiary called Texaco in  
8 the UK, and the two parties were Total, on  
9 the one hand, and Chevron, on the other. I  
10 worked on behalf of Chevron, but this was a  
11 civil action between two large companies,  
12 and I don't know from a legal structure or  
13 standpoint who was plaintiff or who was  
14 defendant.

15 Q. Appelton versus George Whiting?

16 A. Similar situation. I think that the  
17 parties, you know, whether there were  
18 counterclaims and those sorts of things, I  
19 don't really know -- I can't tell you, but  
20 I worked on behalf of an entity that did  
21 some manufacturing, so I think probably in  
22 some defense capacity, but I can't be sure  
23 of that.

24 Q. Is it one of the parties that are listed  
25 here or another party that falls under



1 the "et al"?

2 A. I think that Appleton Paper were the  
3 beneficial party of the work I was doing,  
4 but I'd have to check back.

5 Q. Chestnut Village versus Line Credit?

6 A. That was defense.

7 Q. Motor Fuel Temperature Sales Litigation  
8 Practices?

9 A. Yeah. That was defendant. That was a class  
10 action suit.

11 Q. Gila River versus GE?

12 A. That was defendant.

13 Q. Alliance Pipeline versus C.E. Franklin?

14 A. That was similar to the London one. That  
15 was like two large companies in an  
16 arbitration setting and I was working for, I  
17 believe nominally, a defendant.

18 Q. And Kay Reed versus Tyco?

19 A. Plaintiff.

20 Q. Were you ever designated as an expert by a  
21 court?

22 MR. CAMPBELL: I don't mean to  
23 interrupt, but do you mean, approved by one  
24 or designated in some form --

25 Q. Has a court ever qualified you as an expert

1 in a court to testify? I see you've listed  
2 some trials on there.

3 A. Yes.

4 Q. Okay, and what was the qualification, if at  
5 all, for your expertise in those cases?

6 A. It would be as a mechanical engineer.

7 Q. Was it in both the El Dorado and the  
8 Chestnut Village and Colour Quest matters?  
9 Those are the three that list "trial." In  
10 all three, were you designated by a court as  
11 a qualified expert to provide expert  
12 testimony?

13 A. The first one, evidentiary hearing, was also  
14 a trial setting. I'm not sure how you  
15 distinguish "trial." So the first, the  
16 third, then on the second page at the top,  
17 and then the third on the second page. Yes,  
18 and I think your question was as to whether  
19 I was qualified --

20 Q. In all of those?

21 A. -- in all of those, and that really goes to  
22 whether the judge approved me as an expert  
23 in the trial and the answer is yes.

24 Q. Okay. And what type of testimony did you  
25 offer in the Provenza versus Yamaha Motor

1 case?

2 A. Provenza versus Yamaha was, part of the  
3 electrical system of a motorcycle and its  
4 interaction with allegedly spilled gasoline  
5 as an ignition source, electrical system  
6 ignition source. The third relates to a  
7 turbine. The first at the top of the second  
8 page, page 2 of my testimony list --

9 Q. The Colour Quest?

10 A. Colour Quest, yes. -- relates to the  
11 operation of a tank farm by means of, and so  
12 my job really, as instructed by the Court,  
13 was to analyze the data that was stored by  
14 the computer that had the historical record  
15 of operations of the facility for years. So  
16 I performed, I'd say, a computerized  
17 analysis, data analysis, of an exact copy of  
18 the computer that ran the facility.

19 Q. Okay. And the last one, Chestnut Village?

20 A. Chestnut Village, that related to the  
21 operation of a heating system.

22 Q. In this particular litigation, you mentioned  
23 Andrew Kuzmick in your report. Did he work  
24 for Metso Paper?

25 A. Andrew Kuzmick, who is related to Dave

1 Kuzmick, I understand, certainly at the  
2 times during which there is information that  
3 relates to this case, my understanding is  
4 that he did not work for Metso Paper.

5 Q. And if I understand or get from your report,  
6 it's your understanding that Mr. Kuzmick  
7 proposed the use of 48 Hubbell Tribay  
8 fixture with open reflectors using GE's MVR  
9 750 to Metso?

10 A. Yes.

11 Q. Did he propose any other types of fixtures  
12 to Metso?

13 A. The only proposal that I've seen in writing  
14 has been of this particular combination. I  
15 have not seen any proposal in writing for  
16 others. There may have been discussions  
17 that I don't know about.

18 Q. Did he propose any lamp, other than the GE  
19 MVR 750?

20 A. That's the only lamp that I'm aware of that  
21 he proposed.

22 Q. And you mention further down that, after the  
23 lamps were installed, Metso operated these  
24 lamps continuously starting Monday morning  
25 to Friday afternoon when they were turned

1 off at the close of business. Where did you  
2 get that statement from?

3 A. That's from David Kuzmick, from his  
4 deposition.

5 Q. During the break, I took a look through  
6 Kytomaa exhibits 7 and 8. I did not see Mr.  
7 Kuzmick's deposition in here.

8 A. It is there in two places.

9 Q. Where is it?

10 A. It is as an index or summary as a hard copy,  
11 and on the disk that is there.

12 Q. Can you show me where in Exhibit 7 or 8 Andy  
13 Kuzmick's -- I'm sorry -- David Kuzmick's  
14 deposition transcript appeared?

15 A. As I just stated, it's in the form of a  
16 summary and I'll show it to you. Let me  
17 look again. I thought I had it.  
18 (Indicating.)

19 Q. Now, this says it's for Andrew Kuzmick.

20 A. Were you asking for David? Sorry.

21 Q. Did you get the information that Metso  
22 operated the lamps continuously starting  
23 from Monday morning until Friday afternoon  
24 from Andrew Kuzmick or David Kuzmick?

25 A. From David Kuzmick.

1 Q. This is Andrew.

2 A. I'm sorry. I mis-heard your question. So  
3 which would you like?

4 Q. I I would like the one, whoever you got this  
5 information from.

6 A. I have in front of you here David Kuzmick.

7 Q. David.

8 MR. CAMPBELL: Is the full  
9 transcript on the CD or the disk that's  
10 marked as 9?

11 THE WITNESS: Yes.

12 Q. Okay, and have you reviewed the entire  
13 transcript of David Kuzmick?

14 A. I've reviewed specific parts of his  
15 transcript on the original transcript of his  
16 deposition.

17 Q. Did you review the whole transcript, though?

18 A. I don't recall. It wasn't that long. I may  
19 have reviewed the whole thing. I don't  
20 specifically recall.

21 Q. Can you tell me what is on this disk? This  
22 is Kytomaa exhibit 9.

23 A. Yeah. It's got a lot of materials,  
24 including the depositions. It's got some GE  
25 discovery materials. It will have -- it may

1 duplicate some of the materials that I have  
2 in the folder here, but essentially, my  
3 file. Yeah.

4 Q. The next sentence says, "The lamps were also  
5 operated over the weekend for short periods  
6 of time on a regular basis." Where did you  
7 get that information from?

8 A. From David Kuzmick's deposition.

9 Q. Before I continue with this, while you have  
10 the binder open, I see that there's a table  
11 of contents in the front of your binder.

12 A. Yes.

13 Q. Did you create that table of contents?

14 A. No. I asked that it be created based on the  
15 documents that are in the binder.

16 Q. Who did you ask to create that table of  
17 contents?

18 A. May have been an administrative assistant or  
19 Vijay Somandepalli. I don't recall.

20 Q. That table of contents lists 17 exhibit  
21 tabs; correct?

22 A. Yes.

23 Q. And in fact, there are more than 17 exhibit  
24 tabs in this binder; correct?

25 A. That's correct.

1 Q. And is there a reason why the table of  
2 contents doesn't identify all the exhibit  
3 tabs?

4 A. That's a good question. I think that these  
5 are -- as you know, tab separators used in  
6 ring binders of this kind will come in, you  
7 know, one to 25 or one to five. They'll  
8 come in specific increments, in numbers, and  
9 this particular set goes to 25, but it  
10 appears that we just didn't have enough  
11 documents to fill the 25. So that's the  
12 reason.

13 Q. Fair enough. Is there actually something  
14 behind tab 18?

15 A. There is.

16 Q. Is there something behind tab 19?

17 A. There is.

18 Q. And 20?

19 A. There is not.

20 Q. Okay. So 18 and 19 are not on the table of  
21 contents; correct?

22 A. That's correct.

23 Q. Okay. And the reason they're not on the  
24 table of contents is what?

25 A. Well, so the reason is that those documents



1 behind 18 and 19 are my notes of the April  
2 8, 2010 inspection and my NFIRS data  
3 analysis, which are on the disk, but I  
4 specifically wanted them to be in the  
5 binder, as well. That's my understanding.

6 Q. And that was done after the binder was  
7 created?

8 A. That's correct.

9 Q. Was there ever anything behind tabs 20 to  
10 25?

11 A. No. Certainly, not to my knowledge. To be  
12 complete, there is also a manila folder that  
13 is not behind any of the tabs that contains  
14 some materials, as well.

15 MR. STERN: Why don't we mark that  
16 folder as Kytomaa exhibit 10.

17 Q. In this manila folder, I see a copy of your  
18 report that was previously marked in a  
19 deposition as exhibit 19 for a deposition  
20 that took place on November 17 of 2010. Can  
21 you tell me what the other two -- there are  
22 two other pieces of paper that are in the  
23 manila folder. What are those pieces of  
24 paper.

25 A. These are two graphs. The first graph is a

1 plot of light efficiency against rated life  
2 or life expectancy. The other one is a plot  
3 of correlated color temperature, versus  
4 color rendering index.

5 MR. STERN: I don't need to re-mark  
6 the report. Let's just mark these two  
7 documents, the first one being the  
8 Efficiency versus Rated Life, and we'll do  
9 that as number 10. Number 11 already the  
10 Correlated Color Temperature against Color  
11 Rendering Index.

12 (Graphs marked exhibit numbers 10  
13 and 11 for identification.)

14 Q. Exhibits 10 and 11, were these created for  
15 this litigation?

16 A. Yes.

17 Q. Okay. Were they created at the request of  
18 counsel?

19 A. No.

20 Q. Did you seek authority from counsel before  
21 creating these?

22 A. No. I considered this to be part of the  
23 scope of my undertaking in this case.

24 Q. Okay. You mention in your report, "In 2004,  
25 Metso had the ballasts on all the 750 watt

1 lamp fixtures replaced after a loud buzzing  
2 was heard from some of the fixtures." Where  
3 did you get that information from?

4 A. I believe that was -- I believe that was  
5 David Kuzmick's deposition.

6 Q. And at that point in time, were any of the  
7 750 watt lamps replaced?

8 A. My understanding is that, probably not.

9 Q. And where did you get that understanding  
10 from?

11 A. Well, the invoicing reflects only ballast  
12 changes.

13 Q. At that point in time, did Metso have any  
14 lamps on its shelves, spare lamps on its  
15 shelves?

16 A. I would expect that they may have had spare  
17 lamps on its shelves at that time and other  
18 times.

19 Q. If a spare lamp was replaced at that point  
20 in time, would it appear in the invoicing  
21 that you just discussed?

22 A. It may or it may not.

23 Q. Your second numbered paragraph says, "On  
24 January 21, 2006, Metso personnel working at  
25 the facility noticed a fire on materials

1 stored on a rack at their facility." Where  
2 did you get that information from?

3 A. I've seen that in, let's say, other reports  
4 and I believe David Kuzmick. There may be  
5 other sources. I've seen it multiple  
6 places, all of which I don't necessarily  
7 recall right now.

8 Q. And did that rack have multiple levels?

9 A. Yes.

10 Q. Where was the fire first spotted?

11 A. This is an area that I've -- let's say that  
12 really, Mr. Hoffman has focused on more than  
13 I have, but my recollection is that it was  
14 first spotted high up in the rack.

15 Q. Where did you begin that knowledge from?

16 A. I don't recall, and like I said, this is not  
17 an area that I focused on.

18 Q. Later on, you say, "Subsequent  
19 investigations allege that the fire was  
20 started due to the rupture of an operating  
21 GE 750 watt Metal Halide lamp." Why did you  
22 use the word "allege"?

23 A. I think that's a fair representation,  
24 particularly in the context of this  
25 litigation. It is an allegation.

1 Q. Are you aware of any other allegations  
2 relative to the cause of the fire?

3 A. I have not attempted to perform a  
4 comprehensive review of potential causes in  
5 this particular case, but I would say that I  
6 would not be surprised if there were  
7 allegations of other causes related to  
8 chemicals and such.

9 Q. Has anybody expressed to you an allegation  
10 of a cause of the fire, other than the GE's  
11 Metal Halide lamp?

12 A. I don't recall of any such specific  
13 allegation, but such an allegation may have  
14 been made.

15 Q. By who?

16 A. I don't know. Like I said, I don't know  
17 specifically, but based on my own  
18 investigation, I certainly identified a  
19 number of chemicals that were probably  
20 stored in this general area that can easily  
21 burn.

22 Q. Is any of the issues relative to chemicals  
23 discussed in your report?

24 A. No. I mean, you've asked me the question  
25 and I've told you that that's not an area of

1 my focus, but since you asked me the  
2 question, I answered.

3 Q. Are you aware of of the fire marshall or  
4 fire investigator's conclusion as to the  
5 cause of this fire?

6 A. I've reviewed their materials, but I don't  
7 recall specifically what they said.

8 Q. And you're aware of what plaintiff's experts  
9 conclude as the cause of this fire;  
10 correct?

11 A. Yes.

12 Q. You state further down that, "Hot particles  
13 from the lamp rupture are alleged to have  
14 ignited combustible materials stored in the  
15 vicinity of one of the lamps." What did you  
16 mean by "stored in the vicinity"?

17 A. Just as it says there.

18 Q. Well, what materials are you talking about  
19 that were stored in the vicinity of one of  
20 the lamps?

21 A. The various kinds of materials that were  
22 there in the compounding area, including  
23 rubberized materials and various materials  
24 that included cardboard, storage boxes, and  
25 thin plastic material, wrappings, and things

1 of that kind.

2 Q. How close was the first material that  
3 ignited to the lamp? What was the distance  
4 between those?

5 A. I have not attempted to quantify that.

6 Q. You were at the facility?

7 A. I was.

8 Q. And I did see some drawings of yours in  
9 this.

10 A. Yes.

11 Q. What would you estimate as the distance  
12 between where you believe the point of  
13 origin was and the lamp?

14 A. Like I said, I haven't attempted to perform  
15 that calculation and what I would have to do  
16 to perform that calculation is to quantify  
17 the elevation of the racks, on the one hand,  
18 to quantify the elevation of the lighting  
19 systems, the relative position of the racks  
20 in relation to the lighting systems in plan  
21 view, and then to invoke the Pythagorean  
22 Theorem to make a calculation, and I haven't  
23 done that.

24 Q. Okay.

25 A. And so I would have to do that and then I

1           could give you an answer.

2       Q.   Fair enough.  On the date of the fire, was  
3           the lamp above the aisle or above a rack?

4       A.   I don't know and I know that Mr. Hoffman  
5           actually has undertaken an exercise to make  
6           that determination.  I don't have specific,  
7           let's say, detailed information.  I wouldn't  
8           want to guess.

9       Q.   You reviewed all --

10                       MR. STERN:  Strike that.

11      Q.   You did not make a determination as to  
12           whether the lamp was above an aisle or  
13           above a storage rack on the date of the  
14           loss?

15      A.   My understanding is that one or more lights  
16           were in close proximity to the combustible  
17           materials in the racks, but giving you more  
18           detailed answer to, I don't have  
19           dimensions.

20      Q.   You created -- and this is sort of followup  
21           by the words you used.  Specifically, the  
22           light, the lamp that's alleged by Metso to  
23           have exploded, did you do any determination  
24           to determine whether that lamp, on the date  
25           of the explosion, was directly above an



1 aisle or directly above a storage rack?

2 A. I did not make that determination.

3 Q. Okay. You then go on to say, "The lamp was  
4 recovered from its fixture after the fire  
5 and stored as evidence." How do you know  
6 the lamp was recovered from its fixture?

7 A. I've seen photographs of it.

8 Q. And what did you mean by, "it was recovered  
9 from its fixture"?

10 A. That certain individuals had the opportunity  
11 to see the lamp, so it was somehow  
12 recovered.

13 Q. And that's from photos that you've seen?

14 A. Yes.

15 Q. Okay. Any discussions with anyone about  
16 that or is that knowledge just from those  
17 photos?

18 A. It's from those photos.

19 Q. And who was present when those photos were  
20 taken?

21 A. I wasn't present, so I haven't attempted to  
22 figure out who specifically was present.  
23 I believe that at one time or another, Mr.  
24 Rhiner had an opportunity to see the lamp.  
25 I believe that Mr. Hoffman has had an

1 opportunity to see the lamp. I would not be  
2 surprised if attorneys had been present at  
3 that time, and perhaps representatives from  
4 Metso, but I don't know.

5 Q. Are you aware of any post-fire testing of  
6 the fixture that the GE 750 watt Metal  
7 Halide lamp that plaintiff alleges  
8 exploded?

9 MR. CAMPBELL: This is after the  
10 accident?

11 MR. STERN: Yes. Post-fire.

12 A. I have some rough recollection, but no  
13 details associated with the possibility that  
14 that might have occurred, but I don't recall  
15 any details.

16 Q. Do you have any recollection that a GE  
17 representatives was present for any  
18 post-fire testing of the fixture at issue?

19 A. I don't know.

20 Q. Paragraph numbered 3, is this information in  
21 this paragraph that you acquired from the  
22 materials in exhibits 7, 8, and 9?

23 A. That I think embodies what I know through my  
24 experience in this area, as well as material  
25 that is embodied in the materials acquired

1 through this case.

2 Q. Can you could turn to -- unfortunately, the  
3 pages are not numbered -- the next page,  
4 which has your figure 1 and table 1. Where  
5 did the information for table 1 come from?

6 A. That would have come from lighting handbook  
7 information.

8 Q. Is that lighting handbook somewhere in  
9 exhibit 7, 8 or 9?

10 A. Yes.

11 Q. And what is an incandescent lighting  
12 technology?

13 A. That's commonly known as incandescent lights  
14 or lightbulbs that we use daily.

15 Q. Okay. This column that you have as rated  
16 life hours, did that information come from  
17 the same booklet that the other columns came  
18 from?

19 A. I'm not sure what you mean by "booklet," but  
20 it would have come from the lighting  
21 handbook and potentially also other sources,  
22 such as product catalogs and the like.

23 Q. I guess I didn't phrase the question -- in  
24 this handbook that you've referred to that's  
25 in the exhibits --

1 A. Yes.

2 Q. -- does this chart appear in that handbook  
3 as we see this chart here in your report?

4 A. It may. In the process of generating this  
5 report, I selected widely-used lighting  
6 technologies to make a specific point that  
7 I make in this report. I don't remember  
8 whether the exact format that I show here in  
9 table 1 is the format from the original  
10 source.

11 Q. When was the last time you purchased an  
12 incandescent lightbulb?

13 A. I mean, I would say recently.

14 Q. From where?

15 A. Probably Home Depot.

16 Q. Okay, and when was the last time you  
17 actually installed an incandescent  
18 lightbulb?

19 A. The last time I did that was probably like a  
20 couple of weeks ago. In my bathroom,  
21 there's a small lamp that is an incandescent  
22 lightbulb that I installed there.

23 Q. Who was the manufacturer of that lightbulb?

24 A. I don't know.

25 Q. Can you tell me any of the warnings that

1           were on the packaging for that lightbulb?

2       A.   My recollection of the warnings on typical  
3           lightbulbs --

4       Q.   I'm sorry. I'm talking about the lightbulb  
5           that you just installed in your bathroom.

6       A.   Yeah.

7       Q.   That one, I want to know about.

8       A.   I don't specifically he been recall.

9       Q.   Can you tell me the specific directions that  
10           were on the packaging for that lightbulb  
11           that you installed in your bathroom?

12      A.   I don't recall specific directions on that  
13           package.

14      Q.   Fair enough. The lamp that's at issue in  
15           this litigation, the Metso Paper, that falls  
16           underneath, looking at your table 1, the  
17           Metal Halide category; right?

18      A.   Yes.

19      Q.   And I note that you have rated life as 7500  
20           to 20,000 hours; correct?

21      A.   Yes.

22      Q.   Where did you get the low of being 7500 and  
23           the high being 20,000?

24      A.   My recollection is that I would have got  
25           that from the same source as most of these

1 other entries.

2 Q. Paragraph 5 of your report, you state that,  
3 "In addition to their high energy  
4 efficiency and good color, Metal Halide HID  
5 lamps provide multiple additional  
6 benefits." Isn't it true that in this  
7 report, the next paragraphs are addressing  
8 what you've characterized as the multiple  
9 additional benefits?

10 A. Yes. In part, yes.

11 Q. You mention in paragraph 6 that "HPS lamps  
12 are used widely over roadways, parking lots  
13 and warehouses." Where did you get that  
14 information from, where HPS lamps are widely  
15 used?

16 A. Personal experience and also, the  
17 literature.

18 Q. And is that literature in Kytomaa exhibits  
19 7, 8, or 9?

20 A. I'd say the lighting handbook would talk  
21 about that, specifically. I may not have  
22 included information in my materials here in  
23 exhibits 7, 8, or 9 that are specifically  
24 related to High Pressure Sodium lamps, just  
25 because we're not dealing with a High

1 Pressure Sodium lamp in this case.

2 Q. In Paragraph 9, you state, "When an HID lamp  
3 reaches the end of its operating life, in  
4 the overwhelming majority of cases, it  
5 passively ceases to emit light." What do  
6 you mean by "passively ceases"?

7 A. It just goes out. It no longer works.

8 Q. Is there something that is non-passive? Is  
9 there an opposite to "passively ceasing"?

10 A. If it passively ceases, then it passively  
11 ceases. I'm not sure I understand your  
12 question.

13 Q. Is there a way that an HID lamp can react at  
14 the end of its life that's something other  
15 than passively ceasing to emit light?

16 A. Yes. I mean, there's this phenomenon of a  
17 non-passive failure.

18 Q. And that you get into in point number 10;  
19 correct?

20 A. Yes, correct.

21 Q. And you talk about, "In rare circumstances,  
22 the HID lamp can shatter during operation,  
23 producing hot quartz particles." What did  
24 you mean by "shatter"?

25 A. Break apart.

1 Q. Is "explode" a synonym for "shatter"?

2 A. I mean, I don't use the word "explode," but  
3 it comes apart and you know, loses its  
4 integrity. Essentially, the quartz tube  
5 comes apart into multiple pieces.

6 Q. So when a 750 watt Metal Halide lamp has a  
7 non-passive failure, tell me what  
8 specifically happens to that lamp.

9 A. So what about will tend to happen is the  
10 quartz tube will break apart and particles  
11 will be ejected. Often times, those  
12 particles will then break the outer glass  
13 barrier and then fall downwards, let's say,  
14 from that location.

15 Q. At what speed do they fall downward?

16 A. I don't know specifically what the speed is.

17 Q. What temperature do they fall downward?

18 A. Well, the temperatures would be in the range  
19 up to something like 1100 degrees C.

20 Q. And what is that in Fahrenheit?

21 A. That's about -- I was hoping you wouldn't  
22 ask me that question. It's a couple of  
23 thousand Fahrenheit.

24 Q. It's only because of the accent, I assumed  
25 that you could do the translation. I didn't



1 learn Celcius.

2 A. I have had to do both, yes.

3 Q. So it's greater than 1100, when you do the  
4 conversion?

5 A. Yes, that's correct.

6 Q. You also talk about, in that paragraph, the  
7 rated life. Do you see that?

8 A. Paragraph 10?

9 Q. Yes. Again, paragraph 10.

10 A. Yes.

11 Q. How is rated life calculated, and  
12 specifically for a 750 watt GE Metal Halide  
13 lamp?

14 A. The method of determination of rated life is  
15 based on the life at which time 50 percent  
16 of the lights have ceased to light and 50  
17 percent of the lights continue to light,  
18 based on a large population of lamps.

19 Q. Using your words that in rare circumstances,  
20 the HID lamp can have a non-passive failure,  
21 is that what you're saying, or just that it  
22 can shatter?

23 A. So here, I'm using the word "shatter" in the  
24 context of a non-passive failure. So if you  
25 will, under paragraph 10, I'm describing

1           what a non-passive failure is.

2       Q.   Okay.  And in the rare circumstance that an  
3           HID lamp has a non-passive failure, can you  
4           tell me what the size of the debris field  
5           is?

6       A.   I mean, it would be limited by the geometry  
7           of the fixture and the location of the lamp  
8           within the fixture and the particles will  
9           drop down, mostly down.  If your question  
10          asks for specific distances and such, I  
11          haven't attempted to quantify those.

12      Q.   Yes, that was exactly what I was asking  
13          for.  Specific size of a debris field that a  
14          750 watt Metal Halide GE explodes or has a  
15          non-passive failure.

16      A.   I would say, as a mechanical engineer, I  
17          would expect those particles to be below or  
18          in the vicinity of an area below the  
19          fixture, but I don't know what the diameter  
20          of that area would be.

21      Q.   In order to determine the size of the debris  
22          field, do you need to know the shape of the  
23          fixture itself?

24      A.   To some extent, yes.

25      Q.   And do you need to know how far down the

1 lamp itself hangs into what I'll call the  
2 cone of the fixture?

3 A. Yes.

4 Q. And do you need to know how far above  
5 something the lamp is located?

6 A. I mean, I'd say yes. There are a number of  
7 other considerations. Like, for example,  
8 the manner in which the tube shatters and  
9 the direction of motion of the individual  
10 particles which we know from photographs  
11 that have been taken suggest that the  
12 direction is largely radial. So if you  
13 think of the radial direction of an arc  
14 tube, it is in the direction perpendicular  
15 to the main access, and photographs taken by  
16 Rhiner and others indicate that the  
17 particles go in a radial manner, probably  
18 come into contact with the fixture itself,  
19 and then drop down more or less vertically,  
20 I would expect.

21 Q. In paragraph number 11, you say that,  
22 "There are applications where the risks  
23 posed by the small chance of hot particles  
24 being emitted can be acceptable." What do  
25 you mean by the term "emitted"?

1 A. Being released from a lamp during a  
2 non-passive failure.

3 Q. So you're talking about the lamp explodes  
4 and then hot particles are projectiling  
5 outward or projectiling downward or both?

6 A. Well, I've already described to you what I  
7 think would happen, all right? What I mean  
8 by "emitted" is particles being released by  
9 the lamp in the context of a non-passive  
10 failure. Then the geometry of exactly where  
11 they go is what we've talked about in the  
12 context of the last question you asked. I  
13 think I already answered that.

14 Q. I'm trying to understand the word  
15 "emitted." When the arc tube explodes,  
16 there's gases within the arc tube; right?

17 A. Yes.

18 Q. What happens to those gases?

19 A. Those are vented during the process of the  
20 particles coming apart.

21 Q. The lamp itself?

22 A. Well, let's talk about the arc tube,  
23 specifically. What happens is that there is  
24 an initial failure location within the arc  
25 tube that initiates the propagation of a

1 crack. The propagation of that crack causes  
2 the particles to come loose from one  
3 another. So essentially, at that stage, the  
4 arc tube is losing its structural  
5 integrity. In parallel with the crack  
6 propagating, the crack pressure pushes the  
7 particles outward and -- but at the same  
8 time, the gap that is formed between the  
9 particles is vented out in a harmless way  
10 between the particles as they're moving  
11 radially, and that's what I mean by  
12 "emitted."

13 Q. That's the particles are moving radially, as  
14 opposed to the gas, what you just said?

15 A. Your question was regarding the first  
16 sentence of paragraph 11.

17 Q. When you said that -- I just want to  
18 clarify -- when you said "radially" was  
19 referring to the way the particles were  
20 moving, not the gas was moving?

21 A. I would expect both to be moving radially,  
22 but keep in mind that the particles come  
23 into contact with the reflector of the  
24 fixture. So initially, they move radially,  
25 as the recovered lamp indicates, but the

1 reflector of the fixture actually comes into  
2 contact with the particles, but also, the  
3 gas, and then essentially rain downward.

4 Q. The particles?

5 A. The particles.

6 Q. Does the gas rain down?

7 A. It would be directed and deflected also in  
8 a, let's say, substantially downward  
9 direction because the enclosure of a fixture  
10 is typically constrained in an upward  
11 direction.

12 MR. CAMPBELL: It's one o'clock.  
13 In order to get anything to eat, given the  
14 weather and the like, there's a place  
15 downstairs. I know it closes at 1:30. If  
16 we need to get lunch, and I'm sure that we  
17 do, we should probably break.

18 (Discussion off the record.)

19 (Lunch recess.)

20 Q. (Cont'd. By Mr. Stern) Welcome back.

21 Getting back to paragraph 11, where we left  
22 off, the hot particles that are going to be  
23 emitted, how fast will they be traveling?

24 A. I don't know a specific speed.

25 Q. Have you done any calculations to determine

1 speed for the hot particles that could be  
2 emitted upon the non-passive failure of a  
3 750 watt Metal Halide lamp?

4 A. No.

5 Q. And you mentioned that there are examples of  
6 such applications, including environments,  
7 that do not pose a risk of fire. Is a  
8 warehouse one of those examples?

9 A. Yes.

10 Q. Okay, and was the lamp at issue an S-rated  
11 lamp?

12 A. That is my understanding, yes.

13 Q. At paragraph number 12, you state that, "The  
14 risks associated with S-rated HID lamps are  
15 substantially under the control of the  
16 user." Are they also under the control of  
17 anyone else?

18 A. The primary responsibility is with the owner  
19 and operator of the facility.

20 Q. Is that the same as a user?

21 A. Yes. So typically, in this particular case,  
22 Metso would be the owner, operator of their  
23 warehouse and they used S-rated HID lamps.

24 Q. So would the owner of this building be  
25 substantially -- it would be substantially

1 under the control of the owner of this  
2 building for the lamps that a tenant puts  
3 in?

4 A. I didn't understand the question.

5 Q. You said something that I don't read in your  
6 report here just now, and you said that  
7 owners, operators and users would be  
8 substantially under control, but this only  
9 says "user." So you've thrown in owners and  
10 operators, and what I'm trying to determine,  
11 if in fact what you really meant to say was  
12 "user," as you state in your report, or  
13 this word "user" is something more than a  
14 user.

15 A. It is "user." I stated in the report --  
16 under certain circumstances, the user is  
17 also the owner.

18 Q. And back to the question I asked. Is there  
19 anyone else whose control the risk  
20 associated with S HID lamps can be under?

21 A. As we know in this case, we had Andrew  
22 Kuzmick, who specified the lighting that  
23 Metso chose and also specified the fixtures  
24 that were used, and so to a lesser extent,  
25 some influence existed through Andrew



1 Kuzmick, through Friedman, through, let's  
2 say, Hubbell, but the primary and  
3 substantial control is with the user.

4 Q. Okay, I'm with you, and I think you've now  
5 said that probably three times, but that's  
6 not what I care about right now. That's not  
7 the question I am asking. You chose the  
8 word "substantially," and "substantially"  
9 isn't the word "totally," which means  
10 there's others which this control is also  
11 under.

12 A. Yes.

13 Q. Now, you've also told us about a seller;  
14 right? Andy Kuzmick?

15 A. Yes.

16 Q. Anyone else? We've got the user, we've got  
17 the seller. Anyone else or is that now the  
18 total universe?

19 A. There are people that will make  
20 recommendations in the process, as we know  
21 here, and the decision is ultimately made by  
22 Metso, and so the entities that I've  
23 mentioned are those who participate in the  
24 process about which Metso makes a decision,  
25 and so all others that would participate in